

“Strewth what a nightmare!”

That was a comment written in “chat” during the zoom talk “Visas, Supply Chains and Pigs” given by Catherine Barnard, Cambridge University Professor of European and Competition Law, on February 4th organised by North East Surrey for Europe (NES4EU). Her talk followed by Q&A made for a fascinating and fluent 1 ½ hour session. Videos of the talk and the Q&A are available at <https://nes4eu.co.uk>

The more time passes the more issues about Brexit and European law are morphing into issues about Britain and its constitution – no sooner do we leave the EU than we are faced with neglected but increasingly pressing issues about the way we are governed on this island. For remainers that may be the only silver lining, although we wish we had gotten there another way.

In her talk Catherine said law and legislation were front and centre of Brexit. She described the legal background, supply chain delays and shortages, problems caused by obstacles to the movement of individuals, the knock-on effect on labour availability and the massive amount and cost of all the extra checks and paperwork. Pig culling due to the shortage of EU workers was dramatically described. Catherine challenged head-on the Prime Minister’s statement that no new non-tariff barriers had been introduced.

A number of issues were probed during the Q&A. Some of Catherine’s replies are transcribed below. Thanking her at the conclusion of the session Ian Deloford feared she had brought little “positive” news. Catherine replied: “I would have liked to be more upbeat but I am afraid, whether you are a remainer or a leaver, we are in a very bad place. We will eventually get a government which recognises we have more in common with the EU than against and that having a closer relationship is in the interests of all.”

Supremacy of EU Law “EU law takes precedence but the checks and balances and veto rules meant it was very rare for an EU member country to lose out. The idea that there was a foreign court imposing judgements on us is fundamentally untrue.”

Re-join the EU “I don’t want to be the bearer of bad news to this audience, but I think it extremely unlikely we will re-join as a full member in my lifetime. It is more realistic for us and the EU and neighbouring states to think of arrangements that would not require a full-throttle move towards economic, monetary and political union. We could seek to take advantage of the bits that did work well for us. It would require a great deal of diplomacy.”

The government's description of the UK's post-Brexit status as a 'sovereign, independent country' “Just as, for instance, France and Germany are. They voluntarily surrendered part of their sovereignty because they thought that being part of a larger group was in their national interest. It was not forced on them. They could always withdraw if they considered it in their interest to do so. Note that we do not discuss the limitations on our sovereignty from membership of the WTO or other standard-setting bodies.”

Divergence “Our scope for regulatory divergence is limited – we are relatively small, we are part of European and internationally integrated supply chains and we have to consider the Northern Ireland Protocol. The more we diverge the more complicated things get.”

Northern Ireland Protocol “An extremely worrying time. Why did the DUP vote for Brexit?”

Brexit Opportunities report “Little in it that could not have been pursued as a member of the EU.”

Group travel and individuals working in the EU “A tragedy that because the UK will not accept ID cards groups of young people will not be able to come here anymore. They will go to Ireland. Young people and others travelling to the EU for work - very restrictive, may depend on domestic laws.”

Constitutional issues to improve the nation's governance and prospects “There needs to be a focus from a young age on civic education so people understand the difference between the courts, the government/executive and the legislature/parliament. This government is good at eliding the interest of the government with the interest of parliament and democracy. It sounds incredibly dull but it goes to the core of our constitution. In recent years Acts of Parliament have become increasingly skeletal and huge powers have passed to the executive to implement Acts through Statutory Instruments (SIs). Parliament has scrutiny over Acts of Parliament but almost no effective scrutiny over SIs. The alarming thing is that a government with the majority this one has used it to delegate all important decisions to the executive so the complex and subtle interplay of the roles of the executive and parliament is significantly eroded. It is striking that parliament is packing up early as it has not enough to do, while SIs are being pumped out daily without any effective scrutiny.”

A written constitution “Can't make my mind up. Would take forever to negotiate! Our system works so long as everyone knows and respects the parameters/boundaries.”

Labour Party/'make Brexit work' “In a very difficult position. They cannot get into power as remainers. Need to keep fudging. Will not talk about re-joining. Their best route is to achieve bits and pieces of better deals when trust has been restored.”

Peter Bureau

7th February 2022